

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION**

ANDREW HOWARD BRANNAN,

Plaintiff,

VS.

Commissioner BRIAN OWENS, *et al.*

Defendants.

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CASE NO. 5:13-CV-0454 -MTT-MSH  
42 U.S.C. § 1983

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**SUPPLEMENTAL REPORT  
AND RECOMMENDATION**

On January 13, 2015, Plaintiff Andrew Brannan was executed by the State of Georgia. The Defendants thereafter filed two suggestions of death. (ECF Nos. 31, 32.) The district judge noted that neither suggestion of death had been properly served on Brannan's personal representative, next of kin, or successor in accordance with Federal Rule of Civil Procedure 25(a)(3). Order 1-2, Jan. 22, 2015, ECF No. 33. Such service was consequently ordered and the case stayed. *Id.* at 3.

Defendants filed amended certificates of service indicating service on Brannan's representative or next of kin on January 23, 2015. (ECF Nos. 34, 35.) Pursuant to Rule 25(a), Plaintiff's representative had 90 days thereafter to file a motion for substitution. No motion has been filed. Defendants Rowles and Thorneloe consequently filed a motion to dismiss (ECF No. 38) under Rule 25(a)(1). It is recommended that Defendants' motion be granted. It is further recommended that this action as a whole be dismissed. Fed. R. Civ. P. 25(a)(1) ("If the motion [for substitution] is not made within 90 days after service of a

statement noting the death, the action by or against the decedent must be dismissed.”).

Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to this Recommendation, or seek an extension of time to file objections, within fourteen (14) days after being served with a copy hereof. The District Judge shall make a de novo determination of those portions of the Recommendation to which objection is made. All other portions of the Recommendation may be reviewed for clear error.

The parties are hereby notified that, pursuant to Eleventh Circuit Rule 3-1, “[a] party failing to object to a magistrate judge’s findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court’s order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice.”

SO RECOMMENDED, this 28th day of April, 2015.

S/Stephen Hyles  
UNITED STATES MAGISTRATE JUDGE